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**Garda CL Atlantic, Inc. and United Federation of
Special Police and Security Officers, Inc. Case
22–CA–196340**

July 24, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 4, 2017, by United Federation of Special Police and Security Officers, Inc. (the Union), the General Counsel issued the complaint on April 17, 2017, alleging that Garda CL Atlantic, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 22–RC–170477. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On May 17, 2017, the General Counsel filed with the National Labor Relations Board a Motion for Summary Judgment. On May 19, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Union was improperly certified because the Board agent improperly instructed eligible employees that they were not entitled to vote unless they were guards, coerced them, discouraged them from voting, and interrogated them. In addition, in its answer to the complaint the Respondent also admits that it has refused to meet and bargain with the Union in order to test the Union's certification in Federal court.¹

¹ Also in its answer to the complaint, the Respondent asserts as affirmative defenses, inter alia, that the complaint is barred based on the

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with a facility located at 100 Clover Place, Edison, New Jersey (the Edison facility), has been engaged in the provision of security guard services.

In conducting its operations during the 12 months preceding the issuance of the complaint, the Respondent purchased and received at its Edison facility goods and services valued in excess of \$50,000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

doctrines of laches, waiver, and/or unclean hands; that to the extent the complaint fails to give the Respondent fair and adequate notice of the underlying charges, it denies the Respondent its right to due process under the U.S. Constitution, its right to notice of the charges under Sec. 10 of the Act, and its right to notice and a fair hearing under the Board's Rules and Regulations; and that the complaint is invalid to the extent that it fails to state a claim upon which relief may be granted. The Respondent has not offered any explanation or evidence to support these bare assertions. Thus, we find that these affirmative defenses are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding. See, e.g., *George Washington University*, 346 NLRB 155 fn. 2 (2005), enfd. 2006 WL 4539237 (D.C. Cir. 2006); *Circus Circus Hotel*, 316 NLRB 1235 fn. 1 (1995). In addition, the Board and the courts have long held that the defense of laches does not lie against the Board as an agency of the United States Government. *Entergy Mississippi, Inc.*, 361 NLRB No. 89, slip op. at 2 fn. 5 (2014), affd. in relevant part 810 F.3d 287, 298–299 (5th Cir. 2015), citing *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258 (1969); see *NLRB v. Quinn Restaurant Corp.*, 14 F.3d 811, 817 (2d Cir. 1994).

² The Respondent's request that the complaint be dismissed and that it be awarded its costs and attorney's fees or, in the alternative, that the General Counsel be held to strict proof as to all allegations not specifically admitted, is therefore denied.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on March 25, 2016, the Union was certified on December 14, 2016,³ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included : All full time and regular part-time guards and drivers/ messengers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its 100 Clover Place, Edison, New Jersey facility.

Excluded: All office clerical employees, cash vault service employees, managerial employees, professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By emails dated December 29, 2016, and March 20, 2017, the Union requested that the Respondent meet and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since December 29, 2016, the Respondent has failed and refused to meet and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 29, 2016, to bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided

³ On March 15, 2017, by unpublished Order, the Board denied the Respondent's request for review of the Regional Director's Decision and Certification of Representative.

by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Garda CL Atlantic, Inc., Edison, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain with United Federation of Special Police and Security Officers, Inc. as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full time and regular part-time guards and drivers/messengers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its 100 Clover Place, Edison, New Jersey facility.

Excluded: All office clerical employees, cash vault service employees, managerial employees, professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Edison, New Jersey, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are cus-

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tomarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 29, 2016.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 24, 2017

Philip A. Miscimarra, Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain with United Federation of Special Police and Security Officers, Inc. as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Included: All full time and regular part-time guards and drivers/ messengers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its 100 Clover Place, Edison, New Jersey facility.

Excluded: All office clerical employees, cash vault service employees, managerial employees, professional employees and supervisors as defined in the Act, and all other employees.

GARDA CL ATLANTIC, INC.

The Board's decision can be found at www.nlr.gov/case/22-CA-196340 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

